Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1029

SAMUEL A. SCARNATO, ET AL,
Appellants,

versus

HONORABLE MRS. MARY EVELYN PARKER, TREASURER OF THE STATE OF LOUISIANA, ET AL,
Appellees,

LOUISIANA SCHOOL BOARDS ASSOCIATION AND JEFFERSON PARISH SCHOOL BOARD,
Intervenor-Appellees.

MOTION TO DISMISS OR AFFIRM APPEAL FROM FEDERAL COURT

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Appellee, Jefferson Parish School Board, moves pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States:

(i) to dismiss the appeal sought to be presented by Samuel A. Scarnato, et al, from the judgment of the U. S. District Court for Middle District of Louisiana granting appellees' motion for summary judgment and denying appellants' request for a preliminary injunction on the grounds that the formula for 1975-76 is moot and the formula for the current year is presently under attack in the Louisiana state courts.

(ii) to affirm, without further argument, the judgment of the District Court, on the grounds that *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973) is controlling and that Louisiana assessment practices by themselves do not violate the Equal Protection Clause of the 14th Amendment of the U. S. Constitution.

QUESTION PRESENTED

Whether a statewide school finance statute in which local property assessments involve approximately 6% of the total amount funded to the schools, raises a substantial federal issue.

STATEMENT

The Minimum Foundation Program (hereinafter MFP) is established by the 1974 Louisiana Constitution, Article VIII, Section 13(B). Funds are to be appropriated by the legislature pursuant to formulas adopted by the State Board of Elementary and Secondary Education (hereinafter BESE) and distributed equitably to the parish and city school systems on an annual basis.

The formulas adopted by BESE are made up of the cost side and the support side. At issue in the case at bar is the support side only. Historically, the legislature has not appropriated sufficient funds to fully meet the cost side of the program. Thus, local taxes in the amount of 5 mills (said taxes mandated by 1974 Louisiana Constitution, Article VIII, Section 13[C]) have been charged back to the parish and city school systems. In essence, this is done by multiplying the assessed value of property within the district by 5 mills. After deducting for the cost of collecting the tax, the net collected is deducted from the cost side of that parish's portion of the MFP, and the remainder of the cost is then distributed to the parish from state funds. The combination of the state funds plus the net proceeds of the 5 mill constitutional tax collected by the parishes equals an amount of money necessary to finance the MFP in each parish.

The MFP is established annually and money allocated for the 1975-76 school year has been completely disbursed.

The legislature approved the formula which charges back to the parishes, not the actual net funds received from the 5 mill constitutional tax, but funds based upon "equalized assessments." This new formula is currently under attack in the state courts of Louisiana in an action brought by appellee herein, Jefferson Parish School Board, against the same defendants that are sued in the case at bar. Said suit, entitled "*George Horne, Individually and on Behalf of His Minor Children, and the Jefferson Parish School Board v. Louisiana State Board of Elementary and*

Secondary Education, et al," No. 197-818, challenges the formula as violating the 1974 Louisiana Constitution, Article VIII, Section 13(B).

ARGUMENT

The appeal should be dismissed or, in the alternative, the judgment of the District Court should be affirmed for the following reasons:

1. As a matter of comity, the state court is the preferable forum to interpret the claim asserted by appellants under the 1974 Louisiana Constitution.

2. *San Antonio Independent School District v. Rodriguez,* 411 U.S. 1 (1973) is controlling and the Louisiana assessment practices by themselves do not violate the Equal Protection Clause.

I. The Appeal Should be Dismissed

The District Court in the case at bar refused to accept the pendent claim asserted under the 1974 Louisiana Constitution, Article VIII, Section 13. Now being heard in Louisiana state courts is another very similar challenge to the MFP. Appellees in *Horne, et al* allege that the distribution of state funds pursuant to the 1976-77 MFP violates the mandates of the 1974 Louisiana Constitution, Article VIII, Section 13 in that said funds are not being equitably distributed. The formula for the 1976-77 MFP uses the 5 mill chargeback, but instead of using the actual net dollar figure collected by the parish, a study was conducted in 1974 to

determine the average assessment ratio to fair market value and this hypothetical number was used in determining the amount of chargeback.

In light of both the District Court's refusal to hear the pendent state claim and the *Horne* suit, which will require a state court determination and interpretation of Article VIII, Section 13 of the 1974 Louisiana Constitution, appellee suggests that this Honorable Court should likewise refuse pendent jurisdiction and allow the state court to interpret the state constitution.

If this Honorable Court would refuse the pendent claim, the only remaining relief this Court can grant is a declaratory judgment, which in essence would be partial in nature because it would only cover the federal issue of whether the past MFP violated the 14th Amendment of the U. S. Constitution.

The formula under attack in this suit was changed for the 1976-77 school year to partially conform with appellants' prayer for judgment. With this change and the expenditure of allocated funds for 1975-76, appellants' suit has been rendered moot.

II. The Judgment of the District Court Should Be Affirmed

The U. S. Supreme Court in *San Antonio Independent School District v. Rodriguez,* 411 U.S. 1 (1973) held that education is not a fundamental right under the U.S. Constitution. Also, in the case at bar as in *Rodriguez,* there is no "definable category of 'poor'

people." Since there is no fundamental right involved, nor is there a suspect class, only a rational basis test must be met to uphold the constitutionality of the challenged MFP.

The appellant seeks to distinguish *Rodriguez* from the case at bar by pointing out differences in the *Rodriguez* funding program and the Louisiana MFP. The appellants further contend that varying assessment practices throughout Texas had very little if anything to do with the Texas school finance program, whereas, in Louisiana assessments do play a role in the determination of final funding to the school systems in Louisiana. However, appellee, Jefferson Parish School Board, submits that these differences are immaterial and inconsequential and the appellees can meet the rational basis test as summarized in *Morey v. Doud*, 354 U.S. 457 (1957), which is as follows:

"1. The Equal Protection Clause of the 14th Amendment does not take from the state the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary.

"2. A classification having some reasonable basis does not offend that clause merely because it is not made with mathematical nicety or because in practice it results in some inequity.

"3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed.

"4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary. *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 78-79."

Under this test, the Courts have been very reluctant to overturn any school financing program. In the recent case of *Brown v. Board of Education of the City of Chicago*, 368 F. Supp. 110 (N.D. Ill., 1974) the Court held that merely "administrative convenience, sudden unexpected demographic changes, and response to special educational needs" are sufficient to justify a rational basis test. The Court further held that variations between schools in student-teacher ratio do not violate the Equal Protection Clause under the rational basis test.

Furthermore, the Court in *Rodriguez* touched upon the local property tax as a basis for school revenue and found that such a plan meets the rational basis:

"While it is no doubt true that reliance on local property taxation for school revenues provides less freedom of choice with respect to expenditures for some districts than for others, the existence of 'some inequality' in the manner in which the State's rationale is achieved is not alone a sufficient basis for striking down the entire system. (Citations

omitted.) It may not be condemned simply because it imperfectly effectuates the State's goals. (Citation omitted.) Nor must the financial system fail because, as appellee suggests, other methods of satisfying the State's interest which occasion 'less drastic' disparities in expenditures, might be conceived. Only where state action impinges on the exercise of fundamental constitutional rights or liberties must it be found to have chosen the least restrictive alternative." (Citation omitted.) (411 U.S. at 50, 51.)

Appellee submits that the bases and state purposes outlined in the affidavits of both Mr. George Benton and Mr. Ponder Jones combined with local participation in MFP funding previously discussed are sufficient to meet the classical rational basis test.

In the *Rodriguez* case the Court took note of the fact that there were no uniform statewide assessment practices in Texas. The court stated:

> "Every district supplements its Foundation grant in this manner. In some districts, the local property tax contribution is insubstantial as in Edgewood where the supplement was only $26 per pupil in 1967. In other districts, the local share may far exceed even the total Foundation grant. In part, local differences are attributable to differences in the rates of taxation or in the degree to which the market value for any category of property varies from its assessed value.[100]

* * *

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[100] "There is no uniform statewide assessment in Texas. Commercial property, for example, might be assessed at 30% of market value in one county and at 50% in another. 5 Governor's Committee Report, 25-26; Berke, Carnevale, Morgan & White, supra, n. 29 at 666-667, n. 16." (411 U.S. at 46; 93 Sup. Ct. at 1303).

The Jefferson Parish School Board submits that Stipulation No. 7, infra, is similar to the facts quoted by the Court in the *Rodriguez* case. Therefore, the Jefferson Parish School Board submits the above reasons are sufficient to meet the rational basis test as outlined.

Appellee, Jefferson Parish School Board, further contends that *Levy v. Parker*, 411 U.S. 978 (1973), is not controlling in the case at bar. The *Levy* Court found arbitrary and therefore unconstitutional the formula for distribution from the property tax relief fund (PTR). The Court considered ". . . only the combination of unequal assessments, limitations on the taxing power of a local government, and facially nondiscriminatory payment of state revenues to localities based upon prevailing local millage rates . . ." (346 F.Supp. at 905). The Court earlier, after commenting that property in Louisiana is assessed "on different standards in the various parishes.", (at 900) stated that "Assessment practices contribute to the inequality but they do not alone create it." Thus, though in the case at bar, assessment practices allegedly remain different in the parishes, the other ingredients of the unconstitu-

tional PTR Fund are missing and therefore *Levy v. Parker* is not applicable here.

Appellee, Jefferson Parish School Board, strongly objects to the use of the assessment ratios in appellants' jurisdictional statement (Page 6). The parties in the suit at bar agreed to the following stipulation:

> "Stipulation 7. While the parties differ strongly on the actual ratio of assessed value to fair market value, as these terms are used in Article VII, Section 18, of the Louisiana Constitution of 1974, in the various parishes, as relates both to movable and immovable property; and while they further differ with respect to the combined impact of assessments of movable and immovable property in each of the parishes of the state; and while they do not stipulate with respect to the actual practices in each of the various 64 parishes, they stipulate that the average ratios of assessed value to fair market value of immovable property in the year 1974 differed in at least a substantial number of parishes to a degree more than de minimis as between the assessment ratios in each parish. The parties further stipulate that the two studies made by PAR (Public Affairs Research Council of Louisiana, Inc.), one in 1960 and one in 1971, were studies of immovable property, which included property as set forth in the letter of Arthur Thiel (Exhibit Defendants State - 1). Each of the parties reserves the right to urge any conclusions, however, that might result from the stipulation; for example, plaintiff reserves the right to urge that this difference constitutes a denial of, or one part of a denial of, equal protection of the law; defendants and both intervenors reserve the right to urge that the difference in assessment practices, for example, on immovable property, are not consequential when all of the factors that go into making up the total tax revenues and the Minimum Foundation Formula are taken into account."

This stipulation controls the facts concerning actual assessment practices in Louisiana. Further, the figures quoted in appellants' jurisdictional statement, Page 6, are in contravention of the aforementioned stipulation and are a result of a statistical study, the validity of which is under strong attack by this appellee in the *Horne* suit.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the District Court for the Middle District of Louisiana be affirmed, or the appeal dismissed.

OF COUNSEL